

1 **WO**

2  
3  
4  
5  
6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
8

9  
10 Lewis K. Farnsworth,

11 Petitioner,

12 vs.

13 Charles L. Ryan, et al.,

14 Respondents.

No. CV-10-2803-PHX-PGR (DKD)

ORDER

15  
16 Having reviewed *de novo* the Report and Recommendation of Magistrate  
17 Judge Duncan notwithstanding that no party has filed any objections to the  
18 Report and Recommendation, the Court finds that the Magistrate Judge correctly  
19 concluded that the petitioner's Petition for Writ of Habeas Corpus, timely filed  
20 pursuant to 28 U.S.C. § 2254, should be dismissed because both of the  
21 petitioner's claims raised therein were procedurally defaulted inasmuch as the  
22 petitioner did not fairly present either one to the state courts, and that his failure  
23 to do so cannot be excused because the petitioner has not established any cause  
24 for the procedural defaults or any prejudice arising from the alleged constitutional  
25 errors, or that a fundamental miscarriage of justice will result from the Court not  
26 deciding these defaulted claims. Therefore,

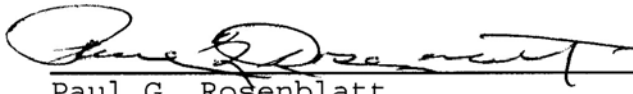
1 IT IS ORDERED that the Magistrate Judge's Report and Recommendation  
2 (Doc. 12) is accepted and adopted by the Court.

3 IT IS FURTHER ORDERED that the petitioner's Petition Under 28 U.S.C.  
4 § 2254 for a Writ of Habeas Corpus by a Person in State Custody is denied and  
5 that this action is dismissed with prejudice.

6 IT IS FURTHER ORDERED that no certificate of appealability shall issue  
7 and that the petitioner shall not be allowed to appeal *in forma pauperis* because  
8 the dismissal of the habeas petition is justified by a plain procedural bar and  
9 jurists of reason would not find the procedural ruling debatable.

10 IT IS FURTHER ORDERED that the Clerk of the Court shall enter  
11 judgment accordingly.

12 DATED this 2<sup>nd</sup> day of May, 2011.

13  
14   
15 Paul G. Rosenblatt  
16 United States District Judge  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26